

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 40 OF 2017

ROHAN KARAPURKAR, PRESENTLY AT
MODERN JAIL, COLVALE, THR. RAHUL
KARAPURKAR.,

... Petitioner

Versus

JERONE FIGORE AND ANR.,

... Respondents

Shri Prasad U. Dessai, Advocate for the petitioner.
Shri M. U. Kenkre, Advocate for the respondent no.1.

Coram:- C. V. BHADANG, J.

Date:- 7th March 2018

P.C.

The challenge in this Criminal Revision Application is to the order dated 27/06/2017, passed by the learned Sessions Judge, thereby dismissing the appeal filed by the petitioner for non-prosecution and for non-compliance with the order dated 30/03/2017 below Exh.D-4. That appeal was filed by the petitioner challenging his conviction for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

2. It is trite that the Criminal Appeal has to be decided on merits and cannot be dismissed in default or for want of prosecution. In so far as the question of non-compliance with the order dated 30/03/2017 is concerned, it is pointed out by the learned Counsel for the petitioner that the said order was for furnishing surety and for deposit of the amount. Here again,

non-compliance with the order, requiring the accused to furnish surety, cannot result into dismissal of the appeal. At the highest, non-compliance with an order to furnish surety can result into an order of suspension of sentence being recalled. In so far as the deposit of amount is concerned, it is not in dispute that the entire amount of the cheque i.e. Rs.1,10,000/- has since been paid by the petitioner.

3. On hearing the learned Counsel for the parties and considering the overall circumstances, the Criminal Revision Application is allowed. The impugned order dated 27/06/2017 is hereby set aside. Criminal Appeal No.24/2017 is restored to the file of the learned Sessions Judge at Margao for disposal according to law.

4. Needless to mention that it would be open for the learned Sessions Judge to pass appropriate orders in the appeal in accordance with the decision of the Supreme Court in the case of METERS AND INSTRUMENTS PRIVATE LIMITED AND ANOTHER VS. KANCHAN MEHTA; AIR 2017 SC 4594, in as much as the entire amount has been repaid by the applicant/accused.

5. Parties to appear before the learned Sessions Judge on 19/03/2018 at 10.00 a.m.

SMA